

NTSB Order No. EA-4439

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 19th day of March, 1996

Respondent .

The law judge affirmed the Administrator's 60-day proposed suspension. We deny the appeal.

The facts of this case are not in dispute. Respondent, at the time an FAA Air Safety Investigator, admitted that he purchased an aircraft in 1992, and operated it the six occasions alleged in the complaint without obtaining the required registration.<sup>3</sup> Respondent urged before the law judge, and claims here on appeal, that our stale complaint rule, 49 C.F.R. 821.33, requires dismissal of the complaint and that, if the complaint is not dismissed, sanction should be a written reprimand only. We address each argument in turn.<sup>4</sup>

1. Should the complaint be dismissed as stale? Our rule provides that, where a complaint states allegations that occurred more than 6 months previous, the Administrator must demonstrate good cause for the delay or the complaint will be dismissed. As pertinent to this case, the rule further requires that, if delay is caused by late discovery of the alleged violation, the Administrator must show he processed the complaint expeditiously and with greater dispatch than usual, on learning of it. Therefore, in deciding this question we must review the events from the time the Administrator learned of the possible violation, that is, January 1994, when the FAA received an

---

<sup>3</sup>September 22, 1992 through September 10, 1993.

<sup>4</sup>Respondent's "Response Brief" is stricken. We are fully capable of analyzing the Administrator's reply and, in any event, find the matters that respondent finds objectionable in that reply to be irrelevant to our evaluation.

anonymous letter about respondent raising fraud and conflict of interest issues, to the time the Notice of Proposed Certificate Action was issued on March 22, 1995.

Respondent argues that his ownership of the aircraft was established in May of 1994 and that the long delay (either from January or May of 1994 until January of 1995) violates the stale complaint rule. However, this argument ignores the Administrator's explanation that respondent's activities were the subject of a criminal investigation by the Department of Transportation Office of Inspector General (OIG).

The Administrator points out that FAA policy requires that any civil inquiry, such as this enforcement action, be held in abeyance pending resolution of the criminal investigation and cites, in support, his Compliance and Enforcement Bulletin 2150.3A, Chapter 6. That chapter contains guidance for the coordinating of criminal and civil investigations. It provides that "unless safety requires, agency personnel ordinarily should not speak to the alleged violator about the alleged violation once the possible criminal activity is identified." Id. at Paragraph 601(c). Where there are criminal and civil implications from the activity, the criminal investigation is given priority, unless safety requires immediate action. Id. at Paragraph 604. Respondent further argues that he was interviewed twice in 1994 and that, therefore, the FAA would not have "tipped him off" to the criminal investigation had it begun the civil one. Any fear of a civil investigation interfering with the

criminal one, he claims, was a moot point.

The FAA's policy reflects the need to coordinate FAA enforcement of the Federal Aviation Regulations with Federal, State, and/or local law enforcement. The scope of FAA regulatory activities makes reasonable, we think, a general policy of postponing the regulatory enforcement action, rather than requiring either case-by-case determinations of whether to proceed or complex and, perhaps impractical, coordination of what could be conflicting, concurrent FAA and criminal investigations.

Respondent's opinion that, in this case, a concurrent civil action would not have interfered with a criminal one is merely hindsight, and with insufficient basis. It is not a ground on which to reject the FAA policy.

The OIG issued its report on January 17, 1995.<sup>5</sup> The FAA received the report January 19. The Letter of Investigation, advising respondent of the pending enforcement investigation, is dated February 7, 1995, and respondent met informally with the FAA on the matter February 21. The Enforcement Investigation Report was completed March 15, and the Notice of Proposed Certificate Action was issued March 22, 1995.

---

<sup>5</sup>The report was forwarded to the United States Attorney for prosecution, which was denied in favor of "strong administrative action." Respondent was fired on the grounds of falsification of official government records. Administrator's Answer in Opposition to Respondent's Motion to Dismiss for Stale Complaint, at Exhibit 5. The OIG found that respondent's aircraft was rented to the FAA 13 times for use in proficiency flights by FAA personnel. Rental payments were funneled to respondent through other companies to obscure his financial interest in the aircraft. Id., OIG report at Exhibit 6.

We see no unreasonable delay during this period, nor has respondent claimed delay in this respect. Once the Administrator was free to proceed, he did so expeditiously and with greater dispatch than normal. Administrator v. Brea, NTSB Order EA-3657 (1992), citing Administrator v. Zanolunghi, 3 NTSB 3696 (1981).<sup>6</sup>

2. Is the sanction excessive? Respondent argues that, in his experience, the typical sanction for use of an unregistered aircraft is a written reprimand or letter of warning, and that the guidelines section of the Enforcement Sanction Guidance Table directs that sanctions be as uniform as possible. As the law judge found, however, the Administrator's sanction here is within the range prescribed in the guidance table (i.e., 30-90 days) and not inconsistent with precedent. Moreover, the Administrator points out that the language regarding uniformity of sanctions was superseded in April 1994, before issuance of his order here, and now calls for "objective, evenhanded consideration of all circumstances...." Respondent was a Principal Operations Inspector in the FAA's Seattle Flight Standards District Office.

A 60-day suspension is not inappropriate considering his special position.<sup>7</sup>

---

<sup>6</sup>Respondent cites Conahan v. Administrator, NTSB Order EA-4276 (1994), for this proposition, but this case involves the Equal Access to Justice Act, raises no issue regarding our stale complaint rule, and does not contain the language cited in respondent's appeal brief at page 6. Administrator v. Conahan, NTSB Order EA-4044 (1993), does address stale complaint issues, but it does not contain the quote offered by respondent, and it is entirely consistent with our decision here.

<sup>7</sup>And, as respondent raised the issue of willfulness through citation to Administrator v. Kowal, 5 NTSB 387 (1985), we would

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's supplemental brief is stricken;
2. Respondent's appeal is denied; and
3. The 60-day suspension of respondent's airline transport pilot certificate shall begin 30 days after service of this order.<sup>8</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)

note that, given his position, knowledge of the unlawfulness of his actions may be presumed, with the result being a more severe sanction.

<sup>8</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).